In the High Court of Uttaranchal at Nainital.

Criminal Misc. Application No. 854/2001

(Old No. 5024 of 1990)

Harbir Singh S/o Bharampal Singh
R/o village Narsan Kalan P.S. Manglaur
District Haridwar .....Petitioner.

Vs.

1- State of U.P.
2- Smt. Prakashi widow of Mannoo Singh
R/o village Narsan Kalan P.S. Manglaur
District Haridwar ....Respondents.

Hon'ble Irshad Hussain, J.

None appear for the petitioner despite service of notice. Heard Sri A. Rab learned Additional Government Advocate and perused the record.

This is a petition under section 482 of the Code of Criminal Procedure (for short 'Code') challenging the impugned order dated 27-1-1990 passed by the learned Pargana Magistrate, Roorkee under section 145(1) of the 'Code' in relation to land Khasra No. 92 situate in village Ladpur Khurd Pargana Manglaur. The propriety of the drawing of the proceedings under section 145 of the 'Code' was challenged on the ground that there was no apprehension of breach of peace and that in regard to the dispute between the parties, the parties were also bound down by asking them to file personal bonds and sureties as were required under the proceedings under Section 107/116 of the 'Code'. No doubt the proceedings under section 107/116 of the 'Code' were drawn to maintain the law and order between the parties who were quarrelling regarding the possession over the land, but on account of this the learned Magistrate was not legally prevented from drawing the proceedings under section 145 of the 'Code' also.

This apart, it is of significance that the learned Magistrate was cautious enough to obtain report from concerned police station which was submitted on 24-1-1990 by the S.H.O., P.S. Manglaur and in it also it was intimated that on account of the dispute relating to the said land

there was apprehension of breach of peace. There was thus material before the learned Pargana Magistrate to draw the proceedings under section 145 of the ‘Code’ and there being no impropriety in the impugned order dated 27-1-1990, the petition id devoid of merit and is hereby dismissed. Stay order dated 3.5.1990 is vacated.

The Pargana Magistrate concerned shall decide the proceedings according to law expeditiously since the preliminary order was drawn more than ten years ago.

Dated: 26-3-2004 **(Irshad Hussain, J.)**

ISB